

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7020 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

RAMJI BHIMJI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR HB PAREKH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Mr. Raval, the learned advocate is present for the petitioner. The facts of the present case are that the respondent driver, during the course of his duties as a driver on 16th May, 1980, while plying his bus between Jam Jodhpur to Bhoja Bedi, alleged to have misbehaved with the passengers as a result of which the passengers got annoyed and alternative arrangement for driver

substituting the respondent was required to be made and that he had shown carelessness in the discharge of his duty and that he had developed bad habits resulting into inefficiency. On the basis of the said misconduct alleged to have been committed by him, a regular departmental inquiry was held and the respondent was dismissed from service by order dated 4th December, 1981 which order of dismissal was challenged by the respondent workman before the labour court Rajkot by filing reference No. 28 of 1985.

Before the labour court, statement of claim was filed by the respondent workman and the petitioner corporation had filed written statement vide Exh. 4. Thereafter, the labour court has further examined the evidence which was led before disciplinary authority in departmental proceedings and reappraised the same. Considering the fact that in prohibition case, the respondent workman was acquitted by the criminal court for want of proof against the offence under the Bombay Prohibition Act. The labour court also considered the fact that the competent authority has exonerated the respondent workman from the misconduct item no. 20 and 27 and that the respondent has put in more than 22 years of service. The finding of the labour court is that the passengers were not examined in the disciplinary proceedings for proving the charge of prohibition offence and the reporter as well as the conductor both were examined in the departmental proceedings. Further, the labour court has found that once the respondent has been declared acquitted, criminal case in respect of the same charge is not justified and, therefore, the labour court has set aside the order of dismissal passed by the competent authority of the respondent corporation. The labour court has also considered that the respondent workman has proved unemployment by his oral evidence and he remained out of job and was not gainfully employed during the intervening period and the petitioner corporation has not proved the gainful employment of the respondent for the intervening period. After considering the evidence on record, the labour court directed the corporation to reinstate the respondent on his original post with continuity of service with back wages for the interim period under its award dated 26th July, 1986.

I have heard the submissions made by both the learned advocates. Mr. Raval, the learned advocate for the petitioner corporation has contended that the charge levelled against the respondent in the disciplinary proceedings as well as in criminal case are totally different and, therefore, the conclusion of the labour

court is erroneous. He has further submitted that the past default card was produced before the labour court wherein various misconduct in past committed by the respondent workman and once he was dismissed from service. According to him, decision in criminal case was on technical ground as there was no evidence led for proving the offence under the Bombay Prohibition Act and, therefore, the findings of the labour court are erroneous and required to be set aside. On the other hand, the learned advocate for the workman has pointed out that the labour court has considered the evidence on record which was recorded in the departmental inquiry and the labour court has given elaborate reason in support of its conclusion and, therefore, the labour court has not committed any error while passing the impugned award and, therefore, the petition should be dismissed.

After considering the submissions from both the sides, it appears that the labour court has appreciated the charge levelled against the respondent workman that the respondent has misbehaved with the passengers and also all of a sudden, left from duty which has adversely affected the efficiency of the corporation. During the course of departmental inquiry, the reporter was examined by the petitioner corporation and there was no cross examination made by the respondent in the departmental inquiry. Not only that though an opportunity was given to the respondent workman to examine on defence but that opportunity was also not availed by the respondent. Thereafter, the conductor who was on duty at the relevant time, Shri Ghela Kala was examined in the departmental inquiry and he has deposed that the respondent was misbehaving with the passengers and the passengers were told to arrange for another driver. This conductor was not cross examined by the respondent workman and it was the defence of the respondent before the disciplinary authority that he was sick and there was pain in his stomach and, therefore, he was not able to verify the perform the duty of driver. However, he was declared acquitted in criminal case for the offence under the Bombay Prohibition Act. The competent authority has come to the conclusion that the item 10 of the S. T. Discipline and Appeal Procedure Schedule "A" has proved, and Item No. 20 and 27 was not proved against the respondent workman. Item NO. 10 was found to have been proved against the respondent. Therefore, considering the findings of the competent authority and also considering the past record of the respondent workman and the decision in criminal case for the offence under the Prohibition Act, I am of the view that this is not the case in which the labour court should grant full back

wages for the intervening period. Prima facie the conclusion of the labour court while reappreciating the evidence which was led in the departmental inquiry that the charge levelled against the respondent was not proved in the departmental inquiry is not proper because the conductor was examined and he proved the facts that at the time of incident, the respondent was misbehaving with the passengers and the passengers were told to arrange for another driver. However, looking to the misconduct which was proved in the departmental inquiry in respect of the indisciplined behaviour and having considering 22 years of service of the respondent workman and past record of the respondent wherein once he was earlier dismissed from service, I am of the opinion that instead of giving full backwages for intervening period, it would be just and proper if 50% of the back wages are withheld by directing the petitioner corporation to pay 50% of the backwages to the respondent corporation considering it to be the punishment for the misconduct committed by him without touching the other part of the award i.e. reinstatement in service with continuity of service.

Accordingly, the impugned award passed by the labour court in reference no. 28 of 1985 dated 26th July, 1986 is modified in so far as it relates to payment of back wages by directing the petitioner corporation to pay 50% of the back wages to the respondent workman instead of 100% of back wages as has been directed by the labour court under the impugned award. Rest of the award passed by the labour court is confirmed. Petition is, thus, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

8.10.1999. (H.K.Rathod,J.)

Vyas